

Legal Avenues: Your Road to Solutions

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Advising Clients on Oil and Gas Leases

As leasing competitiveness intensifies in eastern Ohio, so too has the need for thorough analysis and negotiation of oil and gas lease terms. But often when prospective lessors seek legal counsel, they're most concerned with maximizing their short-term financial gain rather than prioritizing their long-term best interests.¹

The Attorney as Educator

Rational choice theory suggests that prospective lessors are motivated by their own perceived risk-reward ratio, which can result in a disproportionate analysis of lease terms—especially if their knowledge and understanding of oil and gas leasing and exploration is limited or misinformed.² While it can be easy to get swept up in a landowner's excitement at the financial potential of a lease, attorneys must help clients keep the rewards and risks of leasing in perspective so they can make informed decisions.³ Sometimes this requires attorneys to play the devil's advocate and point out the many inadequacies of the typical "standard company lease" that have a substantially greater impact on the client's long-term interests than the signing bonus.⁴

Emphasizing Bargaining Power

Success in any contract negotiation relies in part on bargaining power. A client may not have much leverage in the way of acreage or location, but some bargaining power can be gained through research—of the lessee, the landman brokering the transaction on the lessee's behalf, the local area's market conditions, and the leasing/production history of the property in ques-

tion. The prospective lessor may have some useful information to contribute concerning leasing trends in their neighborhood and details about the lessee's production plans that their landman contact may have revealed. Access to this information can prove invaluable when it comes to helping the client secure an equitable lease.⁵

Building a Better Lease

In pinpointing which lease provisions to negotiate, attorneys can feel caught in a balancing act between advocating aggressively for their clients and catering to lessees' expectations. However, there's no need to fear going overboard on addenda when clients' long-term interests are at stake.⁶ Prioritizing what's most important is key—even if that means leaving some signing bonus money on the table.⁷

According to the *New York Times*, protecting lessors' surface and water rights is a good place to start. In 2011, a survey of 111,000 leases from gas-rich states, including Ohio, found that most standard leases do not provide adequate protection to lessors' surface and water rights. Standard language regarding extensions of the primary term, how production costs are factored into royalty payments, and indefinite shut-in provisions can also adversely impact lessors.⁸

However, it's important to recognize that even the most thoughtfully crafted lease can't guarantee clients will be immune to future conflicts with lessees. Including an arbitration clause in clients' lease terms can help them avoid the time and expense of litigation in resolving future disputes.⁹

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Footnotes

¹Krassen, Glenn S., and Rob James. "The Top Ten Considerations in Advising Clients on Oil and Gas Leases" *Cleveland Metropolitan Bar Journal* 5.3 (2012): 22.

²Fish, Jared B. "The Rise of Hydraulic Fracturing: A Behavioral Analysis of Landowner Decision-Making" *Buffalo Environmental Law Journal* 19 (2012): 233

³Phillips, Rebecca L. "Five Things New Oil and Gas Attorneys should Know" *ABA - Energy Litigation*. 30 Jan. 2013. Accessed 2 June 2014. Available at: <http://apps.americanbar.org/litigation/committees/energy/articles/winter2013-0113-five-things-new-oil-gas-attorneys-should-know.html>

⁴Wenger, Alan D. "David vs. Goliath: Representing Oil and Gas Lessors" *OSBA - Ohio Lawyer Archives*. Accessed 3 June 2014. Available at: <https://www.ohiobar.org/NewsAndPublications/OhioLawyer/Pages/David-vs-Goliath-Representing-oil-and-gas-lessors.aspx>

⁵Hely, Major Joseph W., Jr. "Primer on Analyzing Oil and Gas Leases from the Landowner's Viewpoint" *Military Law Journal* 112 (1986): 290, 300.

⁶Wenger.

⁷Krassen 22.

⁸Urbina, Ian, and Jo Craven McGinty, "Learning Too Late the Perils in Gas Leases" *New York Times* 1 Dec. 2011:1-3. Accessed 2 June 2014. Available at: http://www.nytimes.com/2011/12/02/us/drilling-down-fighting-over-oil-and-gas-well-leases.html?_r=5&hp&

⁹Moore, Loretta W., and David E. Pierce. "A Structural Model for Arbitrating Disputes under the Oil and Gas Lease" *Natural Resources Journal* 37 (1997): 407, 419-420.